

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

OCTOBER SESSION, 1999

FILED
January 27, 2000
Cecil Crowson, Jr.
Appellate Court Clerk

JAMES RICHARD JACKSON,)

Appellant,)

VS.)

STATE OF TENNESSEE,)
AND JAMES BOWLEN,)
WARDEN)

Appellees.)

C.C.A. NO. 03C01-9904-CC-00164

BLEDSON COUNTY

HON. THOMAS W. GRAHAM,
JUDGE

(Habeas Corpus)

FOR THE APPELLANT:

JAMES RICHARD JACKSON
Pro Se
Route 4, Box 600
Pikeville, TN 37367

FOR THE APPELLEE:

PAUL G. SUMMERS
Attorney General and Reporter

ELIZABETH B. MARNEY
Assistant Attorney General
425 Fifth Avenue North
Nashville, TN 37243

J. MICHAEL TAYLOR
District Attorney General
First American Bank Building
Suite 300
Dayton, TN 37321

OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

The Defendant, James Richard Jackson, appeals the denial of his petition for habeas corpus relief. According to his petition, the Defendant was convicted of aggravated rape and was sentenced to twenty years in the Department of Correction in 1992. His conviction was affirmed on appeal.¹ In 1999, the Defendant filed a petition seeking habeas corpus relief in which he alleged numerous grounds. The trial court dismissed the petition without appointing counsel or conducting an evidentiary hearing. We affirm the judgment of the trial court.

The allegations contained in the Defendant's lengthy petition may be generally categorized as follows: (1) erroneous and void conviction because of insufficient evidence, (2) use of false and fabricated evidence by the State, (3) failure to establish a proper chain of custody for evidence, (4) use of constitutionally deficient presumptions, (5) use of inadmissible hearsay testimony, (6) use of perjured testimony by the State, (7) conviction based on insufficient and void indictment, (8) failure of State to disclose exculpatory evidence, (9) unconstitutional composition of grand jury, (10) failure of the State to reveal agreements with witnesses, (11) prosecutorial misconduct, (12) abuse of discretion by trial judge, and (13) ineffective assistance of counsel.

Under Tennessee law, habeas corpus relief is available only when a convicting court is without jurisdiction or authority to sentence a defendant or when that defendant's term of imprisonment or restraint has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). In its order of dismissal, the trial court ruled that the only grounds contained in the petition which could warrant habeas corpus relief were the allegations concerning the sufficiency of the indictment.

¹ See State v. Jackson, 889 S.W.2d 219 (Tenn. Crim. App. 1993).

We agree with the trial court's determination. The remaining grounds stated in the petition, even if true, would not deprive the convicting court of jurisdiction or authority to sentence the Defendant.

We also note that the trial court was correct in recognizing that the validity of an indictment may be addressed in a petition for habeas corpus relief when the indictment is so defective as to deprive the court of jurisdiction. Dykes v. Compton, 978 S.W.2d 528, 529 (Tenn. 1998). Without a valid indictment, the court has no jurisdiction, and there can be no prosecution. Id. However, our supreme court has emphasized that indictments are no longer analyzed in relation to the strict pleading requirements of common law. Id. at 530.

In its order dismissing the petition, the trial court found that it could not consider the allegations concerning the sufficiency of the indictment because a copy of the indictment was not filed with the petition. Tennessee's habeas corpus law provides that if a petitioner is being restrained of his liberty "by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence." Tenn. Code Ann. § 29-21-107(b)(2). This Court has observed that this provision of the statute is mandatory and has noted that, when challenging the sufficiency of an indictment, the failure of a petitioner to include a copy of the indictment in the record precludes both the trial court and this Court from addressing the merits of the argument. See Aaron Bryant v. State, No. 01C01-9801-CR-00038, 1999 WL 228781, at *1 (Tenn. Crim. App., Nashville, Apr. 21, 1999); Gene H. Crank v. State, No. 01C01-9708-CR-00318, 1998 WL 800190, at *1 (Tenn. Crim. App., Nashville, Nov. 19, 1998). We believe the trial judge acted within his discretionary authority when he summarily dismissed the petition challenging the sufficiency of the indictment because the petition did not include a copy of the indictment alleged to be deficient.

Furthermore, we observe that the Defendant has previously filed a petition

for post-conviction relief, which was denied by the trial court and which denial was affirmed by this Court on appeal. See James R. Jackson v. State, No. 01C01-9609-CR-00387, 1998 WL 315955 (Tenn. Crim. App., Nashville, June 17, 1998), vacated and reissued, 1998 WL 559664 (Tenn. Crim. App., Aug. 31, 1998). It is obvious that a copy of the indictment was contained in the record of that proceeding. In this Court's opinion affirming the denial of post-conviction relief, we specifically addressed the validity of the indictment which the Defendant again challenges on this appeal. We noted that the Defendant's indictment was virtually identical to the indictment which our supreme court upheld in State v. Hill, 954 S.W.2d 725, 729 (Tenn. 1997). We held that the indictment upon which the Defendant was convicted adequately set forth the statutory provisions, stated the facts constituting the offense and provided the Defendant with sufficient notice of the charges as mandated by our constitution. Jackson, 1998 WL 315955, at *3-4. The Defendant's challenge to the sufficiency of the indictment upon which he was convicted was accordingly found to be without merit. We decline to revisit the issue.

The judgment of the trial court dismissing the Defendant's petition for habeas corpus relief is accordingly affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

GARY R. WADE, PRESIDING JUDGE

DAVID G. HAYES, JUDGE